

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TRIPLE A FIRE PROTECTION, INC.)	
)	
Respondent,)	
and)	Case 15-CA-11498
)	
ROAD SPRINKLER FITTERS LOCAL)	
UNION 669, U.A., AFL-CIO)	
)	
Charging Party.)	
_____)	

**LOCAL 669'S CROSS-EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, and for the reasons set forth herein, Charging Party Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO files these limited cross-exceptions to correct a discrepancy in the calculations set forth in Administrative Law Judge Keltner J. Locke's Compliance Decision of February 10, 2010 ("ALJD").

1. Local 669 excepts to the ALJD's lack of calculations and figures for liquidated damages and interest payments due on the contributions Respondent must make to the National Automatic Sprinkler Industry ("NASI") Benefit Funds, as required by that Decision.

Specifically, as set forth in the Analysis portion of the ALJD, Judge Locke correctly concluded that "'liquidated damages and interest' should be included as part of Respondent's backpay obligation[]" to the Union's benefit funds, as part of Respondent's make whole obligations. ALJD, p. 13. The ALJD's Calculations, Conclusions and Recommended Order, however, do not set forth any calculations or figures accounting for either liquidated damages or

interest on the amounts of the fringe benefit contributions that Judge Locke held Respondent must pay. *See* ALJD pp. 15-27.

Charging Party introduced evidence at the hearing establishing that, as a component of the make-whole remedy, Triple A must also pay 20% liquidated damages and 12% interest per annum on its delinquent fringe benefit contributions in this case. To that end:

- GC Exh. 3 is the 1988-1991 Agreement between Local 669 and Triple A, and is the contract upon which this compliance proceeding is based. Article 23 of the 1988-1991 agreement expressly provides for recovery of costs of collection, *i.e.* liquidated damages and interest on delinquent contributions. CP. Exh. 3; p. 22, Article 23; Tr. 36; 56-57.
- CP. Exh. 1 is the Declaration of Trust for the NASI Pension Fund in effect during the 1988-1991 Agreement. The provisions for 20% liquidated damages and 12% per annum interest for delinquent contributions made to the NASI Pension Fund are set forth at page 26 of the Trust Agreement, as well as at page 2 of the First Amendment to that Agreement, and page 3, Sections VI and VII of the Guidelines for Participation of Contributing Employers in the Sprinkler Industry Trust Fund (“Guidelines for Participation”). CP. Exh. 4.
- CP. Exhs. 2(a) and (b) are the Declaration of Trust for the NASI Welfare Fund in effect during the 1988-1991 Agreement. The provisions for 20% liquidated damages and 12% per annum on delinquent contributions to the NASI Welfare Fund are set forth at page 26 of the Trust Agreement, as well as at page 2 of the First Amendment to that Agreement, and page 3, Sections VI and VII of the Guidelines for Participation. CP. Exh. 4.
- CP. Exh. 3 is the Agreement and Declaration of Trust for the NASI Education Fund in effect during the 1988-1991 Agreement. The provisions for 20% liquidated damages and 12% per annum on delinquent contributions to the NASI Education Fund are set forth at page 26 of

the Trust Agreement, as well as at page 3, Sections VI and VII of the Guidelines for Participation. CP. Exh. 4.

Based upon this documentary evidence, Michael Jacobsen, the Administrator for the NASI Benefit Funds since 1984 (Tr. 49), testified that he calculated the amount of liquidated damages and interest that Triple A owes on the delinquent NASI Benefit Fund contributions set forth in the Third Amended Compliance specification in this case (Tr. 66-68), in the same manner that the Funds have routinely calculated liquidated damages, and in accord with the 1988-1991 Agreement and operative NASI Benefit Fund documents. The liquidated damages figure from April 22, 1991 through March 23, 2009 totals **\$1,054,084.20**, while the interest figure for that same time period totals **\$10,705,953.06**. CP. Exh. 7. Of course, while these calculations were current as of March 23, 2009, liquidated damages and interest are still accruing, along with Respondent's total backpay and benefit fund contributions, and will continue to accrue until Triple A remedies its proven violations of the Act.

Importantly, Respondent offered no evidence to contradict these calculations at the hearing, so these figures stand unrebutted in the record.

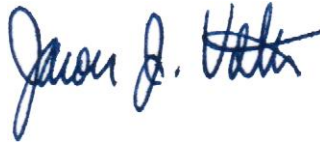
Finally, we note that as Triple A's Exceptions challenge the legality of liquidated damages and interest payments in its Exceptions to the ALJD, legal authorities and arguments establishing that such payments are proper in this case will be completely addressed in Local 669's Brief in Opposition to Triple A's Exceptions.

Therefore, Local 669 requests that the ALJD's Calculations, Conclusions and Recommended Order be modified to the extent necessary to reflect the amounts of liquidated damages and interest that Respondent must pay as part of its make whole obligations, amounts

totaling \$1,054,084.20 in liquidated damages, and \$10,705,953.06 in interest to the NASI Benefit Funds on Triple A's delinquent contributions.

Dated: May 25, 2010

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jason J. Valtos".

Jason J. Valtos
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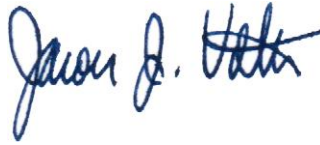
CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2010, I electronically filed Local 669's Cross Exceptions with the National Labor Relations Board's Executive Secretary, and forwarded a copy of the Cross Exceptions by electronic mail to the Parties listed below:

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